

Popular name: Act 451

**380.1230 Offer of full-time, part-time, or contract employment; criminal history check; employment as conditional employee; conditions; voiding contract and terminating employment; report received by another district; consent; request; conducting criminal history check; report; disclosure of conviction of listed offense or felony; use; disclosure; violation as misdemeanor; penalty; exception; definitions.**

Sec. 1230. (1) Except as otherwise provided in this section, upon an offer of initial employment being made by the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school to an individual for any full-time or part-time employment or when school officials learn that an individual is being assigned to regularly and continuously work under contract in any of its schools, the district, public school academy, or nonpublic school shall request from the criminal records division of the department of state police a criminal history check on the individual and, before employing the individual as a regular employee or allowing the individual to regularly and continuously work under contract in any of its schools, shall have received from the department of state police the report described in subsection (8).

(2) If the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school determines it necessary to hire an individual for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body may employ the individual as a conditional employee under this subsection without first receiving the report described in subsection (8) if all of the following apply:

(a) The board or governing body requests the criminal history check required under subsection (1) before conditionally employing the individual.

(b) The individual signs a statement identifying all crimes for which he or she has been convicted, if any, and agreeing that, if the report described in subsection (8) is not the same as the individual's statement, his or her employment contract is voidable at the option of the board or governing body. The department shall develop and distribute to districts and nonpublic schools a model form for the statement required under this subdivision. The department shall make the model form available to public school academies. A district, public school academy, or nonpublic school shall use the model form for the purposes of this subsection.

(3) If an individual is employed as a conditional employee under subsection (2) and the report described in subsection (8) is not the same as the individual's statement under subsection (2), the board or governing body may void the individual's employment contract. If an employment contract is voided under this subsection, the individual's employment is terminated, a collective bargaining agreement that would otherwise apply to the individual's employment does not apply to the termination, and the district, public school academy, or nonpublic school or the board or governing body is not liable for the termination.

(4) For an applicant for a position as a substitute teacher, instead of requesting a criminal history check under subsection (1), a school district, intermediate school district, public school academy, or nonpublic school may use a report received by another district, public school academy, or nonpublic school or maintained by the department to confirm that the individual does not have any criminal history. If that confirmation is not available, subsection (1) applies to the applicant.

(5) If an applicant is being considered for employment by more than 1 school district, intermediate school district, public school academy, or nonpublic school and if the applicant agrees in writing to allow a district, public school academy, or nonpublic school to share the report described in subsection (8) with another district, public school academy, or nonpublic school, a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the report described in subsection (8) from another district, public school academy, or nonpublic school.

(6) An applicant for employment shall give written consent at the time of application for the criminal records division of the department of state police to conduct the criminal history check required under this section.

(7) A school district, intermediate school district, public school academy, or nonpublic school shall make a request to the criminal records division of the department of state police for a criminal history check required under this section on a form and in a manner prescribed by the criminal records division of the department of state police.

(8) Within 30 days after receiving a proper request by a school district, intermediate school district, public school academy, or nonpublic school for a criminal history check on an individual under this section, the criminal records division of the department of state police shall conduct the criminal history check and, after conducting the criminal history check and within that time period, provide a report of the results of the criminal history check to the district, public school academy, or nonpublic school. The report shall contain

any criminal history record information on the individual maintained by the criminal records division of the department of state police.

(9) If the report received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (8) discloses that an individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If the report received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (8) discloses that an individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approve the employment or work assignment in writing.

(10) Criminal history record information received from the criminal records division of the department of state police under subsection (8) shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment or assignment in the position for which he or she has applied or been assigned and for the purposes of subsections (3), (4), and (5). A member of the board of a district or of the governing body of a public school academy or nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose the report or its contents, except a misdemeanor conviction involving sexual or physical abuse or any felony conviction, to any person who is not directly involved in evaluating the applicant's qualifications for employment or assignment. However, for the purposes of subsections (4) and (5), a person described in this subsection may confirm to an employee of another district, public school academy, or nonpublic school that a report under subsection (8) has revealed that an individual does not have any criminal history or may disclose that no report under subsection (8) has been received concerning the individual, and for the purposes of subsection (5), a person described in this subsection may provide a copy of the report under subsection (8) concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804.

(11) Subsection (1) does not apply to an individual who is being employed by or assigned to regularly and continuously work under contract in a school of a school district, intermediate school district, public school academy, or nonpublic school if the individual is not more than 19 years of age and is enrolled as a general education pupil of the school district, intermediate school district, public school academy, or nonpublic school or is not more than 26 years of age and is enrolled in special education programs or services in the school district, intermediate school district, public school academy, or nonpublic school. However, before employing the individual or assigning the individual to regularly and continuously work under contract in a school, the school district, intermediate school district, public school academy, or nonpublic school shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT). If a search of the department of state police's ICHAT reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(12) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(c) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(d) "Regularly and continuously work under contract" means either of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(e) "School property" means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

**History:** Add. 1992, Act 99, Imd. Eff. June 23, 1992;—Am. 1993, Act 68, Imd. Eff. June 21, 1993;—Am. 1993, Act 284, Eff. Apr. 1, 1994;—Am. 2005, Act 129, Eff. Jan. 1, 2006;—Am. 2006, Act 84, Imd. Eff. Mar. 31, 2006.

**Popular name:** Act 451

**380.1230a Criminal records check through federal bureau of investigation; employment as conditional employee; voiding contract and terminating employment; application as substitute teacher; obtaining copy of results from another district, public school academy, or nonpublic school; consent; form and manner of request; use and disclosure of results; violation as misdemeanor; penalty; initiation of criminal records check by department of state police; disclosure that individual convicted of listed offense or other felony; exception; definitions.**

Sec. 1230a. (1) In addition to the criminal history check required under section 1230, the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school shall request the department of state police to conduct a criminal records check through the federal bureau of investigation on an applicant for, or an individual who is hired for, any full-time or part-time employment or who is assigned to regularly and continuously work under contract in any of its schools. Except as otherwise provided in this section, a board or governing body shall not employ an individual or allow an individual to regularly and continuously work under contract in any of its schools until after the board or governing body receives the results of the criminal records check. A board or governing body requesting a criminal records check under this section shall require the individual to submit his or her fingerprints to the department of state police for that purpose. The department of state police may charge a fee for conducting the criminal records check. Subject to section 1230g, a board or governing body shall require an individual to submit his or her fingerprints for the purposes of this section only at the time the individual initially applies for employment with the board or governing body or is initially employed by the board or governing body or is initially assigned to regularly and continuously work under contract in any of its schools.

(2) If the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school determines it necessary to hire an individual for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body may employ the individual as a conditional employee under this subsection without first receiving the results of the criminal records check under subsection (1) if all of the following apply:

(a) The board or governing body requests the criminal records check under subsection (1) before conditionally employing the individual.

(b) The individual signs a statement identifying all crimes for which he or she has been convicted, if any, and agreeing that, if the results of the criminal records check under subsection (1) reveal information that is inconsistent with the individual's statement, his or her employment contract is voidable at the option of the board or governing body. The department shall develop and distribute to districts and nonpublic schools a model form for the statement required under this subdivision. The department shall make the model form available to public school academies. A district, public school academy, or nonpublic school shall use the model form for the purposes of this subsection.

(3) If an individual is employed as a conditional employee under subsection (2) and the results of the criminal records check under subsection (1) reveal information that is inconsistent with the individual's statement under subsection (2), the board or governing body may void the individual's employment contract. If an employment contract is voided under this subsection, the individual's employment is terminated, a collective bargaining agreement that would otherwise apply to the individual's employment does not apply to the termination, and the district, public school academy, or nonpublic school or the board or governing body is not liable for the termination.

(4) For an applicant for a position as a substitute teacher, instead of requesting a criminal records check

under subsection (1), a school district, intermediate school district, public school academy, or nonpublic school may use results received by another district, public school academy, or nonpublic school or maintained by the department to confirm that the individual does not have any criminal history. If that confirmation is not available, subsection (1) applies to the applicant.

(5) If an applicant is being considered for employment by more than 1 school district, intermediate school district, public school academy, or nonpublic school and if the applicant agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal records check with another district, public school academy, or nonpublic school, then a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the results of the criminal records check from another district, public school academy, or nonpublic school.

(6) An applicant for employment shall give written consent at the time of application for the criminal records division of the department of state police to conduct the criminal records check required under this section.

(7) A school district, intermediate school district, public school academy, or nonpublic school shall make a request to the department of state police for a criminal records check under this section on a form and in a manner prescribed by the department of state police.

(8) The results of a criminal records check under this section shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment or assignment in the position for which he or she has applied or been assigned and for the purposes of subsections (3), (4), and (5). A member of the board of a district or of the governing body of a public school academy or nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose those results, except a misdemeanor conviction involving sexual or physical abuse or any felony conviction, to any person who is not directly involved in evaluating the individual's qualifications for employment or assignment. However, for the purposes of subsections (4) and (5), a person described in this subsection may provide a copy of the results under subsection (1) concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804.

(9) Within 30 days after receiving a proper request by a school district, intermediate school district, public school academy, or nonpublic school for a criminal records check on an individual under this section, the criminal records division of the department of state police shall initiate the criminal records check through the federal bureau of investigation. After conducting the criminal records check required under this section for a school district, intermediate school district, or public school academy, the criminal records division of the department of state police shall provide the results of the criminal records check to the district or public school academy. After conducting the criminal records check required under this section for a nonpublic school, the criminal records division of the department of state police shall notify the nonpublic school of whether or not the criminal records check disclosed any criminal history that is not disclosed in the report on the individual provided to the nonpublic school under section 1230.

(10) If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (9) disclose that an individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (9) disclose that an individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approve the employment or work assignment in writing.

(11) Subsection (1) does not apply to an individual who is being employed by or assigned to regularly and continuously work under contract in a school of a school district, intermediate school district, public school academy, or nonpublic school if the individual is not more than 19 years of age and is enrolled as a general education pupil of the school district, intermediate school district, public school academy, or nonpublic school or is not more than 26 years of age and is enrolled in special education programs or services in the school district, intermediate school district, public school academy, or nonpublic school. However, before employing the individual or assigning the individual to regularly and continuously work under contract in a school, the school district, intermediate school district, public school academy, or nonpublic school shall perform a

criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT). If a search of the department of state police's ICHAT reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(12) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(c) "Regularly and continuously work under contract" means either of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(d) "School property" means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

History: Add. 1995, Act 83, Eff. Aug. 1, 1995;—Am. 2005, Act 138, Eff. Jan. 1, 2006;—Am. 2006, Act 84, Imd. Eff. Mar. 31, 2006.

Popular name: Act 451

**380.1230b Applicant for employment; information regarding unprofessional conduct to be provided by previous employer; signed statement authorizing disclosure; request; immunity from civil liability; prohibition; use of information; violation of subsection (5) as misdemeanor; effect of contract or agreement; other information; definitions.**

Sec. 1230b. (1) Before hiring an applicant for employment, a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall request the applicant for employment to sign a statement that does both of the following:

(a) Authorizes the applicant's current or former employer or employers to disclose to the school district, local act school district, public school academy, intermediate school district, or nonpublic school any unprofessional conduct by the applicant and to make available to the school district, local act school district, public school academy, intermediate school district, or nonpublic school copies of all documents in the employee's personnel record maintained by the current or former employer relating to that unprofessional conduct.

(b) Releases the current or former employer, and employees acting on behalf of the current or former employer, from any liability for providing information described in subdivision (a), as provided in subsection (3), and waives any written notice required under section 6 of the Bullard-Plawecki employee right to know act, Act No. 397 of the Public Acts of 1978, being section 423.506 of the Michigan Compiled Laws.

(2) Before hiring an applicant for employment, a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall request at least the applicant's current employer or, if the applicant is not currently employed, the applicant's immediately previous employer to provide the information described in subsection (1)(a), if any. The request shall include a copy of the statement signed by the applicant under subsection (1).

(3) Not later than 20 business days after receiving a request under subsection (2), an employer shall provide the information requested and make available to the requesting school district, local act school district, public school academy, intermediate school district, or nonpublic school copies of all documents in the employee's personnel record relating to the unprofessional conduct. An employer, or an employee acting on behalf of the employer, that discloses information under this section in good faith is immune from civil

liability for the disclosure. An employer, or an employee acting on behalf of the employer, is presumed to be acting in good faith at the time of a disclosure under this section unless a preponderance of the evidence establishes 1 or more of the following:

- (a) That the employer, or employee, knew the information disclosed was false or misleading.
- (b) That the employer, or employee, disclosed the information with a reckless disregard for the truth.
- (c) That the disclosure was specifically prohibited by a state or federal statute.
- (4) The board or governing body of a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall not hire an applicant who does not sign the statement described in subsection (1).

(5) Information received under this section shall be used by a school district, local act school district, public school academy, intermediate school district, or nonpublic school only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she has applied. Except as otherwise provided by law, a board member or employee of a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall not disclose the information to any person, other than the applicant, who is not directly involved in the process of evaluating the applicant's qualifications for employment. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804.

(6) The board or an official of a school district, local act school district, public school academy, intermediate school district, or nonpublic school shall not enter into a collective bargaining agreement, individual employment contract, resignation agreement, severance agreement, or any other contract or agreement that has the effect of suppressing information about unprofessional conduct of an employee or former employee or of expunging information about that unprofessional conduct from personnel records. Any provision of a contract or agreement that is contrary to this subsection is void and unenforceable. This subsection does not restrict the expungement from a personnel file of information about alleged unprofessional conduct that has not been substantiated.

(7) This section does not prevent a school district, local act school district, public school academy, intermediate school district, or nonpublic school from requesting or requiring an applicant for employment to provide information other than that described in this section.

(8) As used in this section:

(a) "Personnel record" means that term as defined in section 1 of Act No. 397 of the Public Acts of 1978, being section 423.501 of the Michigan Compiled Laws.

(b) "Unprofessional conduct" means 1 or more acts of misconduct; 1 or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor; or commission of a crime involving a minor. A criminal conviction is not an essential element of determining whether or not a particular act constitutes unprofessional conduct.

**History:** Add. 1996, Act 189, Imd. Eff. May 8, 1996.

**Popular name:** Act 451

### **380.1230c Notice of conviction of listed offense; employment prohibited; definitions.**

Sec. 1230c. (1) If a school official of a school district, intermediate school district, public school academy, or nonpublic school has notice from an authoritative source that an individual has been convicted of a listed offense, the board of the school district or intermediate school district, board of directors of the public school academy, or governing board of the nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ that individual in any capacity or allow that person to regularly and continuously work under contract in any of its schools.

(2) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(c) "Regularly and continuously work under contract" means either of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils

or related and auxiliary services to special education pupils.

(d) "School property" means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

**History:** Add. 2005, Act 129, Eff. Jan. 1, 2006;—Am. 2006, Act 84, Imd. Eff. Mar. 31, 2006.

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**380.1230d Employee or applicant for employment of school district, intermediate school district, public school academy, or nonpublic school charged with crime; requirements; violation of subsection (1) or (2); person not convicted of crime; forwarding of form; development and implementation of automated program; report; definitions.**

Sec. 1230d. (1) If a person who is employed in any capacity by a school district, intermediate school district, public school academy, or nonpublic school; who has applied for a position with a school district, intermediate school district, public school academy, or nonpublic school and has had an initial criminal history check under section 1230 or criminal records check under section 1230a; or who is regularly and continuously working under contract in a school district, intermediate school district, public school academy, or nonpublic school, is charged with a crime listed in section 1535a(1) or 1539b(1) or a violation of a substantially similar law of another state, a political subdivision of this state or another state, or of the United States, the person shall report to the department and to the school district, intermediate school district, public school academy, or nonpublic school that he or she has been charged with the crime. All of the following apply to this reporting requirement:

(a) The person shall make the report on a form prescribed by the department.

(b) The person shall submit the report to the department and to the superintendent of the school district or intermediate school district or chief administrator of the public school academy or nonpublic school.

(c) The person shall submit the report within 3 business days after being arraigned for the crime.

(2) If a person who is employed in any capacity by or is regularly and continuously working under contract in a school district, intermediate school district, public school academy, or nonpublic school enters a plea of guilt or no contest to or is the subject of a finding of guilt by a judge or jury of any crime after having been initially charged with a crime described in section 1535a(1) or 1539b(1), then the person immediately shall disclose to the court, on a form prescribed by the state court administrative office, that he or she is employed by or regularly and continuously working under contract in a school district, intermediate school district, public school academy, or nonpublic school. The person shall immediately provide a copy of the form to the prosecuting attorney in charge of the case, to the superintendent of public instruction, and to the superintendent or chief administrator of the school district, intermediate school district, public school academy, or nonpublic school.

(3) A person who violates subsection (1) or (2) is guilty of a crime, as follows:

(a) If the person violates either subsection (1) or (2) and the crime involved in the violation is a misdemeanor that is a listed offense or is a felony, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(b) If the person violates either subsection (1) or (2) and the crime involved in the violation is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(4) A person who violates subsection (1) or (2) may be discharged from his or her employment or have his or her contract terminated. If the board of a school district or intermediate school district or board of directors of a public school academy finds, after providing notice and the opportunity for a hearing, that a person employed by the school district, intermediate school district, or public school academy has violated subsection (1) or (2), the board or board of directors may discharge the person from his or her employment. However, if a collective bargaining agreement that applies to the affected person is in effect as of the effective date of this section, and if that collective bargaining agreement is not in compliance with this subsection, then this subsection does not apply to that school district, intermediate school district, or public school academy until after the expiration of that collective bargaining agreement.

(5) If a person submits a report that he or she has been charged with a crime, as required under subsection (1), and the person is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that charge, then the person may request the department and the school district, intermediate school district, public school academy, or nonpublic school to delete the report from its records concerning the person. Upon receipt of the request from the person and of documentation verifying that the person was not convicted of any crime after the completion of judicial proceedings resulting from that charge, the department or a school district, intermediate school district, public school academy, or nonpublic school shall

delete the report from its records concerning the person.

(6) If the prosecuting attorney in charge of a case receives a form as provided under subsection (2), the prosecuting attorney shall notify the superintendent of public instruction and the superintendent or chief administrator of any school district, intermediate school district, public school academy, or nonpublic school in which the person is employed by forwarding a copy of the form to each of them not later than 7 days after receiving the form. If the court receives a form as provided under subsection (2), the court shall notify the superintendent of public instruction and the superintendent or chief administrator of any school district, intermediate school district, public school academy, or nonpublic school in which the person is employed by forwarding to each of them a copy of the form and information regarding the sentence imposed on the person not later than 7 days after the date of sentencing, even if the court is maintaining the file as a nonpublic record.

(7) The department of information technology shall work with the department and the department of state police to develop and implement an automated program that does a comparison of the department's list of registered educational personnel with the conviction information received by the department of state police. This comparison shall only include individuals who are actually school employees at the time of the comparison or who are regularly and continuously working under contract at the time of the comparison. Unless otherwise prohibited by law, this comparison shall include convictions contained in a nonpublic record. The department and the department of state police shall perform this comparison during January and June of each year until July 1, 2008. The department of state police shall take all reasonable and necessary measures using the available technology to ensure the accuracy of this comparison before transmitting the information under this subsection to the department. The department shall take all reasonable and necessary measures using the available technology to ensure the accuracy of this comparison before notifying a school district, intermediate school district, public school academy, or nonpublic school of a conviction. If a comparison discloses that a person on the department's list of registered educational personnel has been convicted of a crime, the department shall notify the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school in which the person is employed of that conviction.

(8) Not later than May 1, 2006, the department shall submit a report to the legislature that details the number of individuals who were on the department's list of registered educational personnel as of January 1, 2006, who were school employees or regularly and continuously working under contract as of January 1, 2006, and who have been convicted of a listed offense or any felony.

(9) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(c) "Regularly and continuously work under contract" means either of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(d) "School property" means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

**History:** Add. 2005, Act 131, Eff. Jan. 1, 2006;—Am. 2006, Act 84, Imd. Eff. Mar. 31, 2006.

**Popular name:** Act 451

### **380.1230f Fingerprints submitted under MCL 380.1230a and 380.1230g; maintenance in AFIS database.**

Sec. 1230f. The department of information technology shall work with the department of state police to establish a system for the department of state police to save and maintain in its automated fingerprint identification system (AFIS) database all fingerprints that are submitted to the department of state police under sections 1230a and 1230g. If a criminal arrest fingerprint card is subsequently submitted to the department of state police and matches against a fingerprint that was submitted under section 1230a or 1230g and stored in the AFIS database, the department of state police shall notify the department.

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**380.1230g Individual employed or working under contract; criminal history check or records check; use of results received by another district; consent; request; use of results for limited purpose; duties of department of state police; disclosure of conviction for listed offense or other felony; exception; definitions.**

Sec. 1230g. (1) Not later than July 1, 2008, the board of a school district or intermediate school district, the board of directors of a public school academy, or the governing body of a nonpublic school shall do both of the following for each individual who, as of January 1, 2006, is either a full-time or part-time employee of the school district, intermediate school district, public school academy, or nonpublic school or is assigned to regularly and continuously work under contract in any of its schools:

(a) Request from the criminal records division of the department of state police a criminal history check on the individual.

(b) Request the department of state police to conduct a criminal records check on the individual through the federal bureau of investigation. The board, board of directors, or governing board shall require the individual to submit his or her fingerprints to the department of state police for the purposes of this subdivision. The department of state police may charge a fee for conducting the criminal records check.

(2) For an individual employed or regularly and continuously working under contract as a substitute teacher, instead of requesting a criminal history check and criminal records check under subsection (1), a school district, intermediate school district, public school academy, or nonpublic school may use results received by another district, public school academy, or nonpublic school or maintained by the department to confirm that the individual does not have any criminal history. If that confirmation is not available, subsection (1) applies to the individual.

(3) If an individual described in subsection (1) is employed by or regularly and continuously working under contract in more than 1 school district, intermediate school district, public school academy, or nonpublic school and if the individual agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal history check or criminal records check with another district, public school academy, or nonpublic school, then a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the results of the criminal history check or criminal records check from another district, public school academy, or nonpublic school.

(4) An individual described in subsection (1) shall give written consent for the criminal records division of the department of state police to conduct the criminal history check and criminal records check required under this section and shall submit his or her fingerprints to the department of state police for the purposes of the criminal records check.

(5) A school district, intermediate school district, public school academy, or nonpublic school shall make a request to the department of state police for the criminal history check and criminal records check under this section on a form and in a manner prescribed by the department of state police.

(6) The results of a criminal history check and criminal records check under this section shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment or assignment in his or her position and for the purposes of subsections (2) and (3). A member of the board of a school district or intermediate school district, of the board of directors of a public school academy, or of the governing body of a nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose those results, except a misdemeanor conviction involving sexual or physical abuse or any felony conviction, to any person who is not directly involved in evaluating the individual's qualifications for employment or assignment. However, for the purposes of subsections (2) and (3), a person described in this subsection may provide a copy of the results under subsection (1) concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804.

(7) Within 30 days after receiving a proper request by a school district, intermediate school district, public school academy, or nonpublic school for a criminal history check and criminal records check on an individual under this section, the criminal records division of the department of state police shall do both of the following:

(a) Conduct the criminal history check and, after conducting the criminal history check and within that time period, provide a report of the results of the criminal history check to the district, public school academy, or nonpublic school. The report shall contain any criminal history record information on the individual that is maintained by the criminal records division of the department of state police.

(b) Initiate the criminal records check through the federal bureau of investigation. After conducting the criminal records check required under this section for a school district, intermediate school district, or public school academy, the criminal records division of the department of state police shall provide the results of the criminal records check to the district or public school academy. After conducting the criminal records check required under this section for a nonpublic school, the criminal records division of the department of state police shall notify the nonpublic school of whether or not the criminal records check disclosed any criminal history that is not disclosed in the criminal history check report on the individual provided to the nonpublic school under subdivision (a).

(8) If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (7) disclose that an individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (7) disclose that an individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approve the employment or work assignment in writing.

(9) Subsection (1) does not apply to an individual who is an employee or is assigned to regularly and continuously work under contract in a school of a school district, intermediate school district, public school academy, or nonpublic school if the individual is not more than 19 years of age and is enrolled as a general education pupil of the school district, intermediate school district, public school academy, or nonpublic school or is not more than 26 years of age and is enrolled in special education programs or services in the school district, intermediate school district, public school academy, or nonpublic school. However, the school district, intermediate school district, public school academy, or nonpublic school shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT). If a search of the department of state police's ICHAT reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(10) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(c) "Regularly and continuously work under contract" means either of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(d) "School property" means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

**History:** Add. 2005, Act 130, Eff. Jan. 1, 2006;—Am. 2006, Act 84, Imd. Eff. Mar. 31, 2006.

**Popular name:** Act 451

### **380.1230h Disclosure.**

Sec. 1230h. (1) A record prepared by a state agency under section 1230d(7), 1535a(15), or 1539b(15) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. However, subject to subsections (2) and (3), a record described in this subsection is only exempt from disclosure as provided in this subsection until the expiration of 15 business days after the date the record is received by a school district, intermediate school district, public school academy, or nonpublic school.

(2) If information described in subsection (1) is determined during the 15 business days exemption period to be inaccurate, then that information is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) After the 15 business days exemption period under subsection (1), all of the following apply:

(a) A state agency shall disclose information in a record described in subsection (1) if the information concerns a conviction that is the type of conviction that is allowed to be disclosed to the public under section 1230(10), 1230a(8), or 1230g(6).

(b) If the information concerns a type of conviction other than a conviction described in subdivision (a), the information is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. However, a state agency shall disclose the information to the public upon request, sorted and identified by school district, intermediate school district, public school academy, or nonpublic school, except that the state agency shall ensure that the information does not include any personal identifying information.

(4) This section does not affect any other rights, duties, or exemptions under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, or under any other law.

*History:* Add. 2006, Act 84, Imd. Eff. Mar. 31, 2006.

*Popular name:* Act 451

### **380.1231 Hiring of teachers; teachers' contracts generally.**

Sec. 1231. (1) The board of a school district shall hire and contract with qualified teachers. Contracts with teachers shall be in writing and signed on behalf of the school district by a majority of the board, by the president and secretary of the board, or by the superintendent of schools or an authorized representative of the board. The contracts shall specify the wages agreed upon.

(2) A teacher's contract shall be filed with the secretary of the board and a duplicate copy of the contract shall be furnished to the teacher.

(3) Except as otherwise provided under this act, a contract with a teacher is not valid unless the person holds a valid teaching certificate at the time the contractual period begins. A contract shall terminate if the certificate expires by limitation and is not renewed immediately or if it is suspended or revoked by proper legal authority.

(4) The board of a school district, after a teacher has been employed at least 2 consecutive years by the board, may enter into a continuing contract with a certificated teacher.

(5) As used in this section, "teacher" does not include a substitute teacher.

*History:* 1976, Act 451, Imd. Eff. Jan. 13, 1977;—Am. 2002, Act 735, Eff. Mar. 31, 2003.

*Popular name:* Act 451

### **380.1232 Repealed. 1995, Act 289, Eff. July 1, 1996.**

*Compiler's note:* The repealed section pertained to teachers' contracts.

*Popular name:* Act 451

### **380.1233 Teaching or counseling by noncertificated teacher; prohibition; exceptions; notice to superintendent of public instruction; waiving student teaching as requirement for vocational certification; competency test; employment as substitute teacher; requirements for service as counselor without valid teaching certificate.**

Sec. 1233. (1) Except as otherwise provided by law, the board of a school district or intermediate school board of an intermediate school district shall not permit a teacher who does not hold a valid teaching certificate to teach in a grade or department of the school.

(2) The board of a school district or intermediate school board of an intermediate school district shall not allow an individual to serve in a counseling role in the school district or intermediate school district, as the role is defined by the superintendent of public instruction, unless the individual meets 1 or more of the following and the board or intermediate school board complies with subsection (7):

(a) The individual holds a valid teaching certificate with a school counseling endorsement.

(b) The individual meets all of the following: